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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 28 1995

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 95-61
Competition in the Market for the	)	
Delivery of Video Programming	)	

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REPLY COMMENTS OF LIFETIME TELEVISION

LIFETIME TELEVISION

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REPLY COMMENTS OF LIFETIME TELEVISION

Lifetime Television ("Lifetime"), by its attorneys, hereby submits its reply comments in response to the Commission's Notice of Inquiry ("NOI") in the above-referenced proceeding. Lifetime's initial comments urged the Commission to promote the ability of both cable operators and alternative multichannel video programming distributors to compete vigorously and, in turn, promote a greater quantity and quality of programming for consumers. Lifetime demonstrated that this goal will be ill-served by the unwarranted application of the program access rules to non-vertically integrated programmers for whom the marketplace and existing regulations already pose tremendous obstacles. Indeed, Lifetime submits that the record now before the Commission provides no basis for saddling such services not owned by cable operators with program access rules designed solely to restrict the ability of vertically integrated cable operators to impede competition in television program distribution.

I. The Record Confirms the Absence of Any Sound Statutory, Economic, or Policy Basis for Extending the Program Access Rules to Program Services in Which No Cable Operator Holds An Attributable Interest

In its initial comments, Lifetime demonstrated that the program access rules were specifically designed to constrain the market power of cable operators, not programmers.[1] No commenter has provided any evidence to dispute the fact that the program access rules were and remain wholly premised on the desire to prevent cable operators from using ownership of popular program services to impede the development of competing distributors. The record demonstrates, further, that there exists no sound policy rationale for stretching these rules to reach beyond the clearly limited scope Congress intended and encumber a very dynamic and competitive marketplace for video program services.[2]

Lifetime and several commenters have demonstrated the wisdom of Congress' desire to limit the scope of the program access rules to vertically

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[1] Comments of Lifetime at 7. Except as otherwise noted, all references to "Comments" contained herein are to comments filed on or about June 30, 1995 in response to the Commission's Notice of Inquiry in CS Docket No. 95-61 (rel. May 24, 1995).

[2] As even the proponents of program access expansion have acknowledged, the Cable Act imposes program access rules only on vertically integrated programmers and thus the statute would need to be amended before the Commission could broaden the applicability of these rules. See, e.g., Comments of The Wireless Cable Association International, Inc. ("WCA") at 18; see also Comments of Viacom Inc. ("Viacom") at 3, n.3.

integrated programmers. Non-vertically integrated programmers have neither the incentive nor the ability to impede competition in the distribution marketplace. Rather, the primary goal of program services not owned by cable operators, particularly advertiser-supported services such as Lifetime, is to maximize distribution. Lifetime's stake in the emergence of vigorous competition in the distribution marketplace is to promote it, not impede it.

Ignoring the fundamental premise of the program access rules, however, certain alternative multichannel video programming distributors urge the Commission to recommend the extension of the rules to cover all programmers.[3] These commenters would thus convert a policy strictly designed to limit cable market power into a full and sweeping regulation of the wholesale pricing of all video programming. For the reasons set forth below, this over-reaching attempt would remove the program access rules from their policy moorings altogether and should not be countenanced.

Not only does this proposed expansion bear no relationship to the rationale underlying the program access rules described above, but there is no demonstrated, much less compelling, need to motivate independent programmers to deal fairly with alternative distributors. As demonstrated above and in

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[3] See e.g., Comments of WCA at 16-18; Comments of PrimeTime 24 at 5-6; Comments of Satellite Receivers, Ltd. ("SRL") at 5; and Comments of National Cable Television Cooperative, Inc. ("NCTC") at 7.

Lifetime's initial comments, maximum distribution is essential to financial success.[4] Indeed, when Lifetime initially entered the business more than ten years ago, it offered its program service free of charge in order to obtain that vital advertising base. Furthermore, as Lifetime indicated in its initial comments, Lifetime has long made its programming available to all distribution technologies.[5] Because non-vertically integrated programmers are highly motivated to widely distribute their products, there is no need or justification for this proposed intrusion into the wholesale program marketplace.

Moreover, commenters urging extension of the rules do not even attempt to address the harm -- both to the viability of independent (i.e., non-vertically integrated) program services and their ability to attract new investment -- that may arise as a result. As Wireless Cable Association International, Inc. ("WCA") describes its complaint, cable operators are able to use a programmer's need for cable carriage to their advantage when negotiating carriage agreements even with non-vertically integrated programmers.[6] By urging the Commission

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[4] Comments of Lifetime at 7. NCTC, a buying group for cable television system operators, states that Lifetime has "flatly refused to recognize or negotiate with NCTC." Comments of NCTC at 2. This is patently untrue. Lifetime has, in fact, negotiated in good faith and at great length with NCTC over the past several years, but has been unable to come to terms as NCTC has refused to accept certain terms fully consistent with Lifetime's other affiliation agreements.

[5] See Comments of Lifetime at 2.

[6] Comments of WCA at 17.

to extend the program access rules to non-vertically integrated programmers, however, WCA and other commenters seek not to eliminate the perceived negotiating leverage of cable multiple system operators, but rather to gain such leverage for themselves.[7] Independent programmers cannot maintain a business, much less attract investment to support expanded program offerings, if the government mandates a below-market price for all customers.[8] To the extent that cable market power skews the program marketplace, public policy should seek to promote competition and thereby erode that market power -- not unfairly penalize its victims.

II. Conclusion

Lifetime once again urges the Commission to foster the development of competition in the video distribution marketplace. It should not do so, however, on the backs of independent programmers like Lifetime that are already struggling -- through arms' length negotiations and without the assured access

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[7] See also Comments of CNBC, et al. ("CNBC") at 5-6.

[8] It is worth noting Time Warner Cable's ("TWC") statement that Time Warner has not made an investment in a new conventional program service since the 1992 Cable Act was passed. Comments of TWC at 24-25. Similarly, Lifetime agrees with CNBC that, like other regulations passed as a result of the 1992 Cable Act, any extension of the program access rules could have significant, unintended and likely unfavorable consequences on the quantity and quality of programming available to consumers. See Comments of CNBC at 5-6.

inherent in a vertically integrated relationship -- to maximize distribution in a competitive programming marketplace. Lifetime therefore strongly urges the Commission not only to refrain from recommending that the program access rules be extended to non-vertically integrated programmers, but also to make an affirmative finding that there is no basis for extending the scope of the rules in such a manner.

Respectfully submitted,

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